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Supreme Court, U.S.
FILED

971782 APR 30 1998

No. _____ OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

STANLEY MA,
SHONG-CHING TONG,

Petitioners

v.

MARTIN L. GOETSCH,
JENNIFER WENGER, REGINALD YATES

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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63 pp

QUESTIONS PRESENTED

1. Whether 9th Circuit Should Ignore Its Own Law Crooks v. Maynard Defining Judicial Act(s)?

2. Whether Martin L. Geotsch's False Statements Made In 93C04927 Were Judicial Acts While Petitioners Were Not Parties To That Action?

3. Whether Respondents' Repeated Ignorances and Refusals To Process Petitioner Tong's Appeal In Case No. VP 94555 Were Judicial Acts?

4. Whether Martin L. Geotsch's Repeated Changes Of Judgments In Case No. 96U00060 Were Judicial Acts When Judgments Were Rendered By Another Commissioner?

5. Whether Respondents' Repeated Ignorances And Refusals To Process Petitioner Tong's Appeal And Obey Appellate Department's Orders Constitute Obstructions of Justice?

6. Whether Reginald Yates' Repeated Failures To Supervise Martin L. Goetsh and Jennifer Wenger Properly and Adequately Were Judicial Acts?

7. Whether 42 U.S.C. Section 1983 Applies To Respondents' Repeated Failures and Refusals To Process Petitioner Tong's Appeal, To Restore Judgment, And To Return Money?

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Petitioners pray that a writ of certiorari issue to review the memorandum of the United States Court of Appeals for the Ninth Circuit dated October 27, 1997.

OPINIONS BELOW

The Memorandum of the Court of Appeals in affirming the dismissal of petitioners' 42 U.S.C. Section 1983 action was issued on October 27, 1997 and is printed in Appendix B.

On January 30, 1998, The Appellate Court denied petitioners' Petition for Rehearing. The Order is printed in Appendix A.

The "Petition for Rehearing and Suggestion for Rehearing En Banc" is printed in Appendix C.

The "Appellants' Reply Brief" is printed in Appendix D.

JURISDICTION

The Memorandum of the United States

Court of Appeals for the Ninth Circuit was filed on October 27, 1997 and the Order denying Petition for Rehearing was filed on January 30, 1998. The jurisdic-tion of this Court rests on 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, previleges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

A. Procedural History:

This case was filed by petitioners on June 26, 1996 for damages against defendants Martin L. Goetsch ("Goetsch"), Jennifer Wenger ("Wenger"), and

Reginald Yates ("Yates") for violations of civil rights, unlawful discriminations, abuse of process, obstruct of justices, inter alia, after Goetsch made false statements in case no. 93C04927, after Goetsch and Wenger repeatedly ignored peti-tioner Tong's requests to transfer peti-tioner Tong's appeal case no. VP 94555 to Los Angeles Superior Court ("LASC"), after Goetsch unlawfully and repeatedly changed judgments in case no. 96U00060, and after Yates' repeatedly failed to properly and adequately supervise Goetsch and Wenger.

On August 8 and September 3, 1996, magistrate judge James W. McMahon, who has been sued three times by petitioner Tong, and district judge Robert M. Takasugi, after they were sued for their violations of ADA, constitutional rights, inter alia, requested magistrate judge Brian Q. Robbins and district judge Manuel L. Real to

transfer the instant case to them even though they knew they should not do so.

On September 15, 1996, petitioners' "Motion" to disqualify magistrate judge James W. McMahon was filed after he has repeatedly abused the judicial process and shown his bias and prejudice toward petitioners.

On September 25, 1996, district judge James M. Ideman denied petitioners' motion to disqualify district judge Robert M. Takasugi.

On October 4, 1996, district judge Robert M. Takasugi recused himself and the case was assigned to district judge Richard A. Paez.

On November 18, 1996, district judge Richard A. Paez, ignored Canon 2 of the Code of Judicial Conduct and the case School Dist. of Kansas City, MO, et al. v. State of MO, et al., 438 F.Supp. 830

(1977), denied petitioners' motion to disqualify magistrate judge James W. McMahon (Goetsch, Wenger, and Yates were district judge Richard A. Paez' Los Angeles Municipal Court's colleagues).

On December 4, 1996, magistrate judge James W. McMahon's "Notice of Filing of Magistrate Judge's Report and Recommendation . . . " was filed.

On December 19, 1996, petitioners' motion to disqualify district judge Richard A. Paez was filed. Petitioners' motion was denied by district judge Harry L. Hupp.

On January 13, 1997, district judge Richard A. Paez, after magistrate judge James W. McMahon filed his "Final Report" which had never served on petitioners, issued his order adopting magistrate judge James W. McMahon's "Report and Recommendation" and dismissed

petitioners' action.

On January 30, 1997, district judge Manuel L. Real shopped for the instant case from district judge Richard A. Paez after the action was dismissed.

On February 11, 1997, petitioners' "Notice of Appeal" was filed.

On February 28, 1997, petitioners' motion to disqualify district judge Manuel L. Real was filed. District judge Goerge H. King immediately dismiss -ed the motion to disqualify district judge Manuel L. Real.

On March 6, 1997, a motion for recon -sideration re motion to disqualify district judge Manuel L. Real was filed. The motion for reconsideration was again dismissed immediately by district judge Goerge H. King.

On March 21, 1997, district judge Manuel L. Real dismissed the instant

case while the appeal was pending in the 9th Circuit Court of Appeals.

Five "Judicial Misconduct Complaints" have been filed with the Judicial Council of the Ninth Circuit against district judges Manuel L. Real and Goerge H. King for their judicial oppressions and abuses of their judicial positions.

B. Statement of Facts

1. Defendants Goetsch, Wenger, and Yates had repeatedly ignored the law and rules to transfer petitioner Tong's appeal, case no. VP 94555, to LASC.

2. The case no. VP 94555 has not been transferred to Los Angeles Superior Court since October, 1993.

3. Defendant Goetsch had knowingly made false statements in case no. 93C04927.

4. Defendant Goetsch, a Commissioner, changed judgment in case no. 96U00060 after the judgment was rendered by

another Commissioner.

5. Defendants have ignored the LASC's Memorandums to restore the judgment in case no. 96U00060 and to refund money in case no. CT 56693.

6. Defendants Goetsch, Wenger, and Yates were district judge Richard A. Paez' municipal court's colleagues.

7. The instant case is not related to any case shopped by magistrate judge James W. McMahon and district judge Robert M. Takasugi.

8. The instant case had not been consolidated with any case after shopped by magistrate judge James A. McMahon and district judge Robert M. Takasugi even though they had alleged they are related.

9. Magistrate judge James W. McMahon should disqualify himself from the instant case after he has been sued three times by petitioner Tong as he did in case no.

CV 96-4787-GNK (Mc).

10. District judge Robert M. Takasugi recused himself from the instant case.

11. District judge Richard A. Paez erred in denying of petitioners' motion to disqualify magistrate judge James W. McMahon when facts and evidence presented had shown James W. McMahon has repeatedly abused his judicial position.

12. District judge Richard A. Paez should not let district judge Manuel L. Real have the case after district judge Richard A. Paez had issued his judgment dismissing of the case.

13. District judge Manuel L. Real had abused his judicial position as follows: 1) gave the case to district judge Robert M. Takasugi, 2) asked district judge Richard A. Paez for the case, and 3) dismissed the case after the case had been dismissed by district judge Richard A.

Paez.

14. District judge Goerge H. King had stated that his parents left China when he was young due to the China Oppressive Regime. **His statements are vague, ambiguous, and false** if compared with district judge Manuel L. Real's persistences of disregarding of the laws and rules and what he had done in the instant case and the following cases: a) U.S. v. Martha Dahdad (district judge Manuel L. Real dismissed her conviction after she was convicted of Bankruptcy Fraud; district judge Manuel L. Real and Martha Dahdad both are Mexican-Americans), b) Brown v. Daden (9th Cir. 1987) 815 F2d 575, c) In re Matter of Stephen Yagman, (9th Cir. 1986) 796 F2d 1165, and d) U.S. v. Flynt (9th Cir. 1985) 756 F2d 1352.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Erred In Its Resolution Of An Important And Recurring Issue Significantly Affecting The Administration Of Justice - Whether Defendants Have Any Authority: To Make False Statements Knowingly, To Ignore The Appeal Of Case No. VP 94555, To Change Judgment Rendered By Another Commissioner, And To Disobey The LASC's Memorandums

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In Crooks v. Maynard 913 F.2d 699 (9th Cir. 1990), the court held that:

> "Mere fact that defendant is judge does not mean that defendant has absolute immunity; absolute immunity only applies to judicial acts and not administrative, legislative, and executive functions that judges may perform."

Title 42 U.S.C. Section 1983 provides remedy and the following cases provide examples to recover damages from wrong-

doers by the abuse of government authori -ty and to deter future constitutional violations:

(1) Owen v. City of Independence, Mo., et al. 445 U.S. 621, 100 S.Ct. 2979

(2) Monroe v. Pape (1961) 365 U. S. at 184, 81 S.Ct. at 482

(3) D. C. Court of Appeals v. Feldman 460 U.S. 462, 490, Mr. Justice STEVENS, in his dissenting opinion, stated that:

> "If a challenge to a state court's decision is brought in United States district court and alleges violations of the United States Constitution, then by definition it does not seek appellate review. It is plainly within the Federal question jurisdiction of the Federal Court. 28 U.S.C. Section 1331.

(4) Stump v. Sparkman 435 U.S. 349, 55 L.Ed.2d 331, 98 S.Ct. 1099, Mr. Justice STEWART in his dissenting opinion, had stated "A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting

in his judicial capacity.

(5) Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."
>
> "The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."
>
> "There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221
>
> "The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied . . . . Some State Courts have been instruments of suppression of civil rights . . . ; but the wrong to be remedied still exists." at p. 1222
>
> "I cannot believe that judges * * * would fail to discharge their duty faithfully and fearlessly according

to their oaths and consciences."
at p 1223

In the instant case as demonstrated by Appendixes C and D, respondents Yates, Goetsch and Wenger had acted unconstitutionally, unlawfully, and oppressively. Furthermore, what they did was inconsistent with actual justice and not warrant -ed by any principle of law.

Since the Civil Rights Act authorizes any person, who is deprived of any right, privilege, or immunity secured to him by the Constitution of the United States, to bring an action against the wrongdoers in the Federal Courts, and petitioners' complaint was not seeking appellate review, thus, petitioners have stated a Federal Cause of Action in the instant case.

II.

Defendants Should Not Be Immuned

Because Their Acts and Conduct Were Willful, Unlawful, and Oppressive

As the attached Appendixes C and D depict, immunity should not be available to Yates, Goetsch, and Wenger, because their acts and conduct were willful, unlawful, oppressive, unethical, and unprofessional and they had shown no respect to the law and the judicial process.

The United States Constitution, Fifth Amendment provides that respondents, shall not deprive of petitioners' life, liberty, or property without due process of law

The United States Constitution, Fourteenth Amendment, Sec. One provides that respondents shall not deprive petitioners' life, liberty, or property, without due process of law; or deny

petitioners' within its jurisdiction the equal protection of laws.

California Rules of Court, Rules 181 thru 190 provide procedures for processing appeal. The failures of defen -dents to follow Rules 181 thru 190 are not judicial acts.

Since respondents Yates, Goetsch, and Wenger had acted oppressively, unethical -ly and unprofessionally, they should be liable for damages caused by them.

III.

DISTRICT JUDGES MANUEL L. REAL, ROBERT M. TAKASUGI, RICHARD A. PAEZ, AND GOERGE H. KING HAD SHOWN THEY HAVE NO RESPECTS TO THE LAW AND RULE AND HAD INSULTED THE JUDICIAL SYSTEM

In School Dist. of Kansas City, MO, et al. v. State of MO, et al., Supra, Chief District Judge John W. Oliver, in

recusing himself from the case, stated:

> "Judge would nonetheless recuse himself on his own motion pursuant to broader command of Canon 2 of the Code of Judicial Conduct approved by the Judicial Conference of the United States."
>
> "a judge 'shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned' has been broadened by the additional requirements contained in the Code of Judicial Conduct for United States Judges, adopted by the Judicial Conference of the United States, . . . Canon 2 of that Code requires that a judge not only avoid impropriety in regard to the conduct of his duties but that he should avoid even the appearance of impropriety in the conduct of his office.' "
>
> "Canon 2 of the Code of Judicial Conduct codified the delicate and difficult duty of a judge to conclude whether his decision to sit may reasonably present even an appearance of impropriety. That duty is a judicially imposed duty and has as its source principles and experience which are quite independent of duties wich may be imposed by legislative action."
>
> "Mr. Justice Frankfurter's statement of his reasons for refusing to sit in Public Utilities Commission v. Pollak, 343 U.S. 451, 466, 72 S.Ct.

813, 96 L.Ed. 1068 (1952). , , , expressed his view, with which I agree, that 'it is desirable to state why one takes himself out of a case.' This is what he said in that case: 'The judicial process demands that a judge move within the framework of relevant legal rules and the convented modes of thought for ascertaining them. He must think dispassionately and submerge privated feeling on every aspect of a case. . . . This is achieved through training, professional habits, self-discipline and that fortunated alchemy by which men are loyal to the obligation with which they are entrusted. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact (343 U.S. 466-67."

"Quoted from Judge Young:
The fact that confidence in the judiciary is essential to the successful function of our democratic form of government. That form of government could not long survive if citizens could not have faith in the impartiality of judges."

"Quoted from Judge McCree:
A judge, although perhaps not legally disqualified under 28 U.S.C. Sections 144, 455, should recuse himself if he knows of some reason why he should not sit, and in such a case should

state the basis for his decision. A litigant is entitled to have a judge to whom a matter is assigned in due course hear and dispose of that matter."

"Quoted from Judge Morton: The quality of justice cannot be dependent upon the identity of a particular individual who sits on a particular Court at a particular time. A general uniformity of justice is effected by the nature and structure of our judicial system. It is the process, not the particular person, which determine the justice applied in our society.

Judge Morton stated the quite practical hope that 'perhaps changing judges can operate as it sometimes appears when bassball clubs change managers - maybe emotions can be calmed so intelli -gence can have an opportunity."

As facts and evidence shown in the instant case and as shown in Appendixes C and D, district judges Manuel L. Real, Robert M. Takasugi, Richard A. Paez, and Goerge H. King had insulted the judicial system and paid no respect to the law and rules.

CONCLUSION

Mr. Justice BRENNAN of the United States Supreme Court had stated in Adickes v. Kress & Co., 398 U. S. 144, 190, 90 S.Ct. 1598, 1620, 26 L.Ed.2d 142 (1970):

> "How 'Uniquely amiss' it would be, therefore, if the government itself - ' the social organ to which all in our society look for promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct' - were permitted to disavow liability for the injury it has begotten."

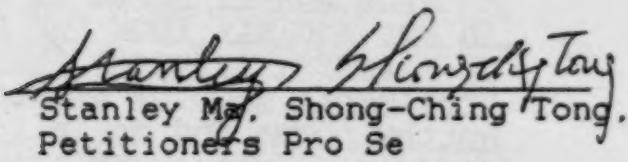
This case is suing for damages for Yates', Goetsch's, and Wenger's willful and unlawful violations of petitioners' civil rights, because their acts and conduct are not judicial acts.

Based upon all of the foregoing points and authorities, respondents' acts and conduct had violated clearly established State and Federal Statutory

and the Constitutional Rights of which a reasonable person would have known.

Petitioners respectfully request that a Writ of Certiorari be issued to review the judgment in the instant case.

Dated: April 29, 1998



Stanley Ma. Shong-Ching Tong.
Petitioners Pro Se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANLEY MA, SHONG-CHING TONG, Plaintiffs-Appellants, v. MARTIN L. GOETSCH, JENNIFER WENGER, REGINALD YATES, Defendants/Appellees.	No. 97-55331 D.C. No. CV 96-04488-RAP Central California ORDER FILED JAN. 30, 1998 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Before: THOMPSON, T. G. NELSON, KLEINFELD, Circuit Judges.

The panel has voted to deny appellants' petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc.

See Fed.R.App.P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANLEY MA, SHONG-CHING TONG,	) No. 97-55331
Plaintiffs-Appellants,	) D.C. No. CV 96-04488-RAP
v.	)
MARTIN L. GOETSCH, JENNIFER WENGER, REGINALD YATES,	) MEMORANDUM*
Defendants/Appellees.	) FILED OCT. 27, 1997 CATHY A. CATTERSON, CLERK, U.S. COURT OF APPEALS

Appeal from the United States District Court for the Central District of California
Richard A. Paez, District Judge, Presiding

Submitted October 20, 1997**

Before: THOMPSON, T. G. NELSON, and KLEINFELD, Circuit Judges.

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* This dosposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case

Stanley Ma and Shong-Ching Tong appe - al pro se the district court's Fed. R. Civ. P. 12(b)(6) dismissal of their action alleging that a municipal court judge, a municipal commissioner, and a municipal clerk violated their civil rights in hand -ling several municipal court lawsuits. We have jurisdiction pursuant to 28 U.S.C. Section 1291. We review the dismissal de novo. see Mullis v. United States Bankr. Court, 828 F.2d 1385, 1388 (9th Cir. 1987), and we affirm.

The district court properly dismissed the action on the ground that plaintiffs' claims were barred by the doctrine of judicial immunity. See id. at 1388 (stating that judges are entitled to

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suitable for decision without oral argument. See Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

absolute immunity from civil liability for damages and that court clerks have absolute quasi-judicial immunity from civil liability when they perform tasks that are an integral part of the judicial process); See also Franceschi v. Schwartz, 57 F.3d 828, 830 (9th Cir. 1995) (per curiam) (stating that municipal court commissioners performing judge-like functions are entitled to absolute immunity from civil liability for damages).

We reject the plaintiffs' argument that the district court abused its discretion by denying plaintiffs' motions to disqualify the district judge and the magistrate judge. See Thomassen v. United States, 835 F.2d 727, 737 (9th Cir. 1987).

AFFIRMED.

I.

INTRODUCTION AND STATEMENT OF APPELLANTS

Appellants Stanley Ma and Shong-Ching Tong seek rehearing en banc of the October 27, 1997 Panel Memorandum (Thompson, J.; T. G. Nelson, J.; and Kleinfeld, J.) affirming the District Court's judgment dismissing appellants' Complaint on ground that the claims against defendants were barred by the doctrine of judicial immunity.

In the judgment of Appellants, rehear-ing en banc is needed because:

1) the Panel's Memorandum has over-looked the facts that defendant Goetsch's failure to transfer appellant Tong's appeal to the Appellate Department of the Los Angeles Superior Court ("LASC") since 1993 was/is not judicial act, that defendant Goetsch has failed to give any authority supporting his claim that his ignorance

and refusal to proceess the appeal, case no. VP 94555 was/is judicial act and was/is allowed by the law or rule, and that defendant Goetsch had the right to change other judges' judgments, inter alia (Exhibit 2, 5),

2) defendant Yates has failed to give any authority supporting his claims, as a presiding judge, that his failures to properly and responsively supervise defendants Goetsch and Wenger were judicial acts and NOT administrative act (Exhibits 2 - 5),

3) defendant Wenger has failed to give any authority, as the Court Administrator of the Pomona Municipal Court, supporting her failures to process appel-lant Tong's appeal, case no. VP 94555 and her failures to obey the Appellate Department's Orders were permitted by the law or rule (Exhibits 2, 3), and

4) the district court has failed to give any authority supporting its ruling that Defendants Goetsch, Yates, and Wenger could ignore the law, the Rule, and betray -ed their Oaths of Office for acts as afore-said when appellants were not part -ies to cases 96U00060, 93C04927, and 96S00687 and were damaged by defendants' unlawful, unethical, and unprofessional acts and conduct.

II.

PETITION FOR REHEARING EN BANC

A. THE PANEL'S MEMORANDUM IS INCONSISTENT WITH THE STATUTE THAT THE JUDGMENT SHOULD BE OVERTURNED WHEN MAGISTRATE JUDGE JAMES W. MCMAHON FAILED TO REMOVE HIMSELF FROM THE CASE AND WHEN HE KNEW HE CANNOT/COULD NOT BE IMPARTIAL

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28 U.S.C. Section 455(a) provides that a federal judge must disqualify himself or herself from any proceeding in which his or her impartiality might reasonably be questioned.

As Exhibits 1, 6, and 7 demonstrate, magistrate judge James W. McMahon has acted willfully, unethically, and unprofessionally when he shopped for unrelated cases and knew he has been acted like a "Hatchet Man" for someone and a Racist and paid no respect to the law and judicial integrity (ER 189, 190 show district judge Robert M. Takasugi and magistrate judge James W. McMahon failed to state on what ground case no. CV 94-4784-RMT (MC) was related to case no. CV 96-4488-R (BQR)).

Also, Exhibits 1, 6, and 7 can show:

1). district judge Manuel L. Real's 1/30/97 Order, 95-6673 was unlawful and unconstitutional after 96-4488 judgment entered, 2). district judge Manuel L. Real's Orders manifested his persistent disregard of the laws and rules, 3). Appellants had the right to sue defen-

dants when those defendants had no respect to the law and the judicial system. 4). district judge Manuel L. Real, defen -dants, and their attorneys had failed to cite any statue, cases, or anything to support their allegations that suing wacky, unethical, and unprofessional judges, magistrates, and commissioners is frivolous when defendants took cover - judicial immunity - as their excuses and when they had failed to prove that they had not done anything wrong or they had respected to the law and order.

As Exhibit 1 contained in this Petition depicts, district judges Manuel L. Real and Goerge H. King had abused their discretions and judicial positions:

a) The judicial misconduct complaints filed by appellant Tong with the Clerk of the Judicial Council against district judges Manuel L. Real and Goerge H. King

and have been pending since March 14, 1997 can show there are bad apples in the judicial branch and those bad apples had committed treason to the U. S. Constitution and their oaths of office;

b) Those bad apples knew/know how to criticize other people or nations violated/violating people's human rights and discarded/discarding law and order. Yet, those bad apples were/are doing the same thing to people just as they allege their parents hated to be being oppressed (Goerge H. King alleged his parents left China because the oppressive regime they hated); c) The Judicial Council has not said district judges Manuel L. Real and Goerge H. King did right thing in the instant case; and d) The Judicial Council has not said suing judges is a crime and the Congress should codify it into the law.

In Appellants' Excerpts of Record, appellants have presented ample facts and evidence showing there are many crooks hidding in the judicial branch just as Supreme Court JUSTICES Brenner, Douglas, Stevens stated in various cases that the court should not cover up for those crooks' shamless, lawless, and ruleless acts and conduct when they knew they should have self-esteem, self-respect, and self-conscious to uphold the LAW as all in our society look for promotion of liberty, justice, fair, and equal treatment and the setting of worthy norms and goals for social conduct from the judicial system.

Since magistrate judge James W. McMahon had acted improperly, district judge Robert M. Takasugi had shopped for the case and disqualified himself from the case and district judge Richard A.

Paez has acted as a "Rubber Stamp" in the instant case, therefore, the rehearing en banc should be granted because:

1) If there is a law such as 28 U.S. C. Sections 144 or 455, then, magistrate judge James W. McMahon should be disqualified from the case no. CV 96-4488 (Exhibit 6 - magistrate judge James W. McMahon removed himself from CV 96-4787-GHK, district judge Takasugi removed himself, magistrate judge McMahon had no reason not to do so; district judge Richard A. Paez was defendants' Los Angeles Municipal Court judicial colleagues while he was a judge);

2) If magistrate judge James W. McMahon and district judge Richard A. Paez had ignored the law as aforesaid, the judgment resulted from their NO impartiality should be vacated.

B. THE PANEL'S MEMORANDUM CONFLICTS WITH THE CASE CROOKS v. MAYNARD AND FAILS TO GIVE ANY AUTHORITY THAT DEFENDANTS COULD/CAN IGNORE THE LAW/RULE NOT TO TRANSFER THE APPEAL CASE NO. VP 94555 TO THE APPELLATE DEPARTMENT OF LASC AND DISOBEY THE APPELLATE DEPARTMENT'S JUDGMENTS

In Crooks v. Maynard (9th Cir. 1990) 913 F2d 699, the Court held that absolute immunity only applies to "judicial act" and not administrative acts and that defendant is a judge does not mean that defendant has absolute immunity.

Since appellant Tong has the right to appeal to the Appellate Department to review defendant Goetsch's ruling in case no. VP 94555, thus, defendants Yates, Goetsch, and Wenger could not/cannot ignore the law/rule not to transfer appe-llant Tong's appeal, VP 94555, to the Appellate Department since 1993. Moreover, the Panel's Memorandum did not give any authority stating that 1) defendant

Goetsch can/could change other judges' judgments, 2) defendants can/could disobey the Appellate Department's Orders, CT 56693 and 96U00060, and 3) that defendant Goetsch can/could falsely, fraudulent-ly, unethically, and unprofessionally misstated, distorted, and misrepresented facts and evidence in case no. 93C04927.

III.

PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING EN BANC

A. THE PANEL SHOULD REVERSE THE DISTRICT COURT'S JUDGMENT THAT MAGISTRATE JUDGE JAMES W. MCMAHON AND DISTRICT JUDGE RICHARD A. PAEZ HAD ACTED IMPRO-PERLY IN THE INSTANT CASE

In Pierson v. Ray 87 S.Ct. 1213, 1220 (1967), Mr. Justice DOUGLAS, in his dissenting opinion, had stated, or quoted, that:

> "Congress intended to provide a remedy for the wrongs being perpetrated."

"The Courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity."

"There had been a complete breakdown in the administration of justice in certain States and laws nondiscriminatory on their face were being applied in a discriminatory manner." at p. 1221

"The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. . . . Some State Courts have been instruments of suppression of civil rights. . .; but the wrong to be remedied still exists." at p. 1222

"I cannot believe that judges * * * would failed to discharge their duty faithfully and fearlessly according to their oaths and consciences * * *." at p 1223

Exhibits 1, 6, and 7 contained in this Petition can prove Mr. Justice DOUGLAS' point of view regarding those wanton, oppressive, unethical, unprofess -ional, and wacky judges, commissioners, and court administrators.

Since district judge Richard A. Paez and magistrate judge James W. McMahon had knowingly and intentionally ignored facts and evidence that defendants Yates, Goetsch, and Wenger were not entitled to any immunity when they willfully, unlawfully, wantonly, and repeatedly discarded the law/rule not to transfer appellant Tong's appeal, VP 94555, to the Appellate Department, disobeyed the Appellate Department's Orders, CT 56693 and 96U00060, and falsified the Decision and Order in 93C04927, the district court's judgment should be reversed and vacated.

B. THE PANEL SHOULD VACATE ITS DECISION BECAUSE DISTRICT COURT FAILED TO CITE ANY AUTHORITY THAT DEFENDANTS YATES, GOETSCH, AND WENGER HAD THE AUTHORITY NOT TO TRANSFER APPELLANT TONG'S APPEAL, CASE NO. VP 94555, TO THE APPELLATE DEPARTMENT, AND DISOBEY THE APPELLATE DEPARTMENT'S ORDERS

Rules 181 thru 190 of California Rules of Court provide procedures for

defendants to process appellant Tong's appeal, VP 94555, to the Appellate Department.

If appellant Tong had followed the Rules to appeal the VP 94555 to the Appel-late Department, then, defendants had/ have no authority not to transfer appel-lant Tong's appeal, VP 94555 to the Appellate Department.

Further, if the Appellate Depart-ment's Orders have to be followed by defendants, then, defendants have no right to disobey the Appellate Depart-ment's Orders in CT 56693 and 96U00060.

Since the district court and the Panel did not give any authority supporting their rulings that defendants', Yates, Goetsch, and Wenger, disobedience, failur-es, and ignorance were allowed by the law/rule, this Petition for Rehearing En Banc should be granted.

IV.

CONCLUSION

We, as Human-Beings, cannot avoid not to make any mistake once in a while. The U. S. Supreme Court created the judicial immunity (the high court had ignored the constitution that only the Congress can make the LAW and it had not requested the Congress to codify the "judicial immunity" into the LAW) was because:

1) judicial people were professionally trained and educated;

2) judicial people know they have ethical duties to conduct themselves in highest standards; and

3) judicial people would perform their jobs faithfully and honestly.

The First Amendment to the U. S. Constitution provides that people can and are entitled to petition the Government for redress of grievances.

Therefore, for the foregoing reasons, appellants request rehearing of the issues raised above, and/or rehearing en banc, as appropriate, for reasons set out in the Statement of Appellants, above.

DATED: November 10, 1997

Stanley Ma, Shong-Ching Tong,
Appellants Pro Se

LIST OF EXHIBITS

1. Appellant's 11/8/97 letter to Chief Judge Procter R. Hug Re Judicial Misconduct Complaints filed against Manuel L. Real and Goerge H. King since 3/14/97

   Shong-Ching Tong's 7/16/97 letter to the Clerk of the Court, U. S. Court of Appeals for the Ninth Circuit regard-ing Judicial Misconduct Complaints against district judges Manuel L. Real and Goerge H. King, 97-80117, 97-80237, 97-80238

   Reply from the Clerk's Office regarding Judicial Misconduct Complaints, 7/22/97

   Judicial Misconduct Complaint, 3/14/97, 97-80117 (95-6673)

Judicial Misconduct Complaint, 4/24/97, 97-80237 (97-0906)

Judicial Misconduct Complaint, 5/2/97, 97-80238 (96-4488)

Judicial Misconduct Complaint, 10/8/97, NO NUMBER (97-7809)

Judicial Misconduct Complaint, 10/27/97, NO NUMBER (96-8464)

2. Memorandum Judgment, 96U00060, 7/29/97 (The judgment of May 15, 1996, modifying the judgment entered on April 29, 1996, is reversed, and the matter is remanded with directions to the trial court to enter judgment in accordance with the judgment of April 29, 1996 (p. 1, LL 19 - 22; Once the Judgment is entered, the judge loses an unrestricted power to change it (p. 3, LL 14 - 15; defendants have ignored the Appellate Department's Order)

   Notice of Appeal, 96U00060, 5/24/96

   Minute Order and Clerk's Notice of Ruling and/or appealable order, 96U00060, 7/1/96 (Defendant Goetsch modified judgment after Notice of Appeal filed)

   Minute Order and Clerk's Notice of Ruling and/or Appealable Order, 96U00060, 5/15/96 (Defendant Goetsch modified judgment awarded by Commissioner Marc D. Lauper on 4/29/96)

3. Memorandum Judgment, CT 56693, 4/9/97

(The judgment is reversed with directions to dismiss the complaint; defen -dants have ignored the Appellate Department's order)

4. Policy of Non-Discrimination on the Basis of Disability, County of Los Angeles (Notice)

   Decision and Order, 93C04927, 2/8/95 (Defendant Goetsch falsely, unethical -ly, and unprofessionally stated appe- llant Tong could paint the house, clean the house, clean the carpet, etc. when defendant Goetsch knew appe- llant Tong is a disabled person and had nothing to do with the House. Moreover, defendant Goetsch ignored the case HSU v. ABBARA, 9 Cal.4th 863, 39 CR2d 824 - prevailing party under the rental agreement (Contract) entitl -ed to attorney's fees and court costs)

5. Judgment and Notice of Entry of Judg- ment, 96S00687, 4/17/96

   Minute Order and Clerk's Notice of Ruling, 96S00687, 5/15/96 (Defendant Goetsch unlawfully modified the judg- ment awarded by another Temp. Judge)

   Phillip H. Phelps' and Lupe Quineones Phelps' (account closed) check of $3,200.00 (These two Mexican-Americans knowingly wrote the check to rent the House)

   Ten (10) photos show Phillip H. Phelps and Lupe Quineones Phelps (Both Mexican -Americans; They have been evicted by

various landlords since moved from Texas to California in the last three years) are rich people and know how to enjoy life at other people's expenses

6. Order to Reassign Case (Magistrate Judge), 96-4787-GHK, 8/16/96 (Reason - plaintiff CHOW has previously named magistrate judge James W. McMahon as a defendant in a separate civil action. Given this history, plaintiff will inevitably claim that magistrate judge McMahon is not impartial in the present action)

   Order Re Transfer Pursuant to General Order 224, 96-4488, 9/3/96 (From Manuel L. Real to Robert M. Takasugi)

   Order to Reassign Case Due To Self-Recusal, 96-4488, 10/4/96 (I am being sued by plaintiff, in related case 96-5832; If district judge Takasugi disqualified himself, then, magistrate judge James W. McMahon should do the same thing - they shopped for case no. 96-4488 after they were sued in case no. 96-5832)

   Judgment, 96-4488-RAP, 1/13/97

   Order to Show Cause, 95-6673, 1/30/97
   Notice of Appeal, 96-4488, 2/11/97
   Order of Dismissal, 95-6673, 3/21/97

   (These Exhibits show district judges Manuel L. Real and Richard A. Paez had no respect to the law and the judicial process when they transferred 96-4488 after the judgment entered)

7. Newspaper Clipping, 3/12/96, Inland Valley Daily Bullertin - Judge Guilty of Misconduct - all federal judges in San Diego removed themself from the case due to defendant was a State judge and the case was transferred to Los Angeles

APPELLANTS' REPLY BRIEF

COME NOW Appellants/Plaintiffs Stanley Ma and Shong-Ching Tong and submit their "Appellants' Reply Brief" in response to Appellees/Defendants', Martin L. Goetsch ("Goetsch"), Jennifer Wenger ("Wenger"), and Reginald Yates ("Yates"), "Appellees' Answer Brief" ("AAB") as follows:

1. Responses to AAB's untrue statements - Defendants in their AAB had know-ingly, unethically, and unprofessionally misstated, misrepresented, and distorted the following facts:

a) On the Cover Page of AAB, the magistrate judge should be James W. McMahon, who shopped the case from Brian Q. Robbins. The district judge should be Richard A. Paez after the case was shopp-ed by Robert M. Takasugi from Manuel L. Real and after Robert M. Takasugi disqua-lified himself on 8/22/97 (ER 189, 190);

b) Defendant Goetsch is a Commissioner, not a judge (AAB, p. 2, line 5);

c) The case defendant Goetsch falsified the "Judgment" was a civil contract case (ER 92 - 100), not a small claim case (AAB, p. 2, lines 7, 8);

d) The case defendant Goetsch failed to transfer the appeal to the Los Angeles Superior Court was a traffic case (ER 77 - 91), not a small claim case;

e) The case defendant Goetsch unlawfully, unethically, and unprofessionally altered the judgment was a civil eviction case, not a small case (ER 110 - 115);

f) Defendants' statement that "Tong's appeal on two separate cases which were previously dismissed by the court" are false (AAB, P. 2, lines 14 - 16). Defendants Goetsch and Wenger have repeatedly ignored the law to transfer the case no. VP 94555 to the Los Angeles Superior

Court. And the Los Angeles Superior Court reversed the case no. CT 56693's judgment and directed defendants to dismiss complaint against Plaintiff Tong. Up to this date, defendants have ignored the Los Angeles Superior Court's "Memoran -dum Judgment" (Exhibit 13).

g) Defendant Wenger did not grant the fee waivers to "The PHELPS". Defendant Goetsch granted the fees waiver based on reports from defendant Wenger and her employees, who failed to screen "The PHELPS'" false Applications (AAB, P. 2, lines 16 - 18). The facts were clear -- if "The PHELPS" had courages to rent houses at a monthly rent over $1,600.00, then, defendants Goetsch and Wenger should know "The PHELPS" had committed frauds on the court when they submitted their Applications.

h) Appellants had never mentioned

case no. 96U00040 in the Complaint or other referenced court papers (AAB, P.2, line 22).

i) "Appellants' action would be barr-ed by the principle of res judicata (AAB, p. 9, lines 8 - 10). Defendants failed to state WHEN and HOW the instant case was barred by the Doctrine of Res Judicata. Defendants lied to this Court again.

j) The instant case was dismissed on January 13, 1997. The "Notice of Appeal" was filed on February 11, 1997 (Exhibit 11) (Copies attached). The attached copy of the "most recent order" in AAB clearly shows defendants' acts and conduct were unlawful, fraudulent, and wanton when the District Court had no jurisdiction over the case while the appeal has been pend-ing. This copy also shows district judge Manuel L. Real has no respect to the

judicial system and to the law.

2. Appellants' Responses to the Appellees' Issues are:

I. APPELLANTS HAVE STANDING TO ASSERT CLAIM AGAINST APPELLEES BECAUSE THEY HAVE CONSPIRED TO INJURE APPELLANTS AS ASSERTED

In case no. 93C04927, Philip Ma and Wan Kwan Choi are appellant Ma's parents and gave authority to take care of the real property. Appellant Ma's schooling and living costs and expenses have been depending on the rental incomes. The falsification of facts and evidence in the "Decision and Order" by defendant Goetsch had not only caused financial difficulties on appellant Ma. Defendant Goetsch's unlawful, unethical, and unpro-fessional acts and conduct have also slandered and libeled appellant Tong.

In case no. 96U00060, Cau-Min Li has assisted appellant Tong financially after

appellant Tong was certified by a medical doctor as a disabled person. The unlawful alteration of judgment by defendant Goetsch has caused Li's assistance due to the loss of rental incomes and damages caused by the PHELPS. And defendants' unleash "Phillip Harold Phelps" to sue Li without paying the court fees and denial of Li's back rents claim against the Phelps had also affected Li's assistance to appellant Tong.

Since defendants' unlawful, unethical, and unprofessional acts and conduct as alleged have caused damages to appellants, appellants have standing to sue defendants for damages and injuries.

II. THE FEDERAL COURTS HAVE SUBJECT MATTER JURISDICTION BECAUSE a) THE REPEATED FAILURES OF DEFENDANTS TO PROCESS VP 94555 APPEAL TO THE APPELLATE DEPARTMENT OF LOS ANGELES SUPERIOR COURT AND TO DISMISS CASE NO. CT 56693 AGAINST APPELLANT TONG

AND b) DEFENDANT GOETSCH'S FALSIFICA
-TION IN CASE NO. 93C04927 AND UNLAW
-FUL ALTERATION OF JUDGMENT IN CASE
NO. 96U00060 HAD VIOLATED APPELLANTS'
CIVIL RIGHTS

As stated in the foregoing paragraph, 1) defendant Goetsch a) should not knowingly falsify the facts and evidence in case no. 93C04927's "Decision and Order", b) should not unlawful alter the judgment in case no. 96U00060, c) should not unleash "The Phelps" to sue people for free; 2) defendant Yates should not dismiss case no. 96S00687 when he knew "The Phelps" owed rents and damaged the real property; and 3) defendant Wenger should not a) ignore to process appeals in cases nos. VP 94555, CT 56693, and 96U00060 timely, b) let "The Phelps" sue people for free, and c) grant fees waiver to "Phelps".

Exhibit 13 (Memorandum Judgment)

shows the Appellate Department of Los Angeles Superior Court ordered defendants to dismiss case no. CT 56693. The case no. VP 94555 was not mentioned because defendants have repeatedly failed to process the appeal, case no. VP 94555, to the Appellate Department of Los Angeles Superior Court. Defendants should not knowingly misstate, misrepresent, or distort this fact in their BRIEF that The Case Is A Small Claim Case (AAB, page 2).

The Federal Courts have subject matter jurisdiction because defendants' acts were not judicial acts. Defendants have repeatedly failed to discharge their administrative duties in handling appeal in case no. VP 94555 since October, 1993 and timely handled appeals in cases nos. CT 56693 and 96U00060 (Crooks v. Maynard 913 F2d 699 (9th Cir. 1990)).

Moreover, if defendants ignored the

appeal in case no. VP 94555. then, the Appellate Department of Los Angeles Super -ior Court, the California Court of Appeal, the California Supreme Court, and the U. S. Supreme Court will never have any chance to review defendant Goetsch's ruling. Thus, defendants have again knowingly, fraudulently, falsely, unethically, and unprofessionally misstated, misrepre -sented, and distorted the fact or legal authority to this Court in their "AAB".

III. THE DOCTRINE OF JUDICIAL IMMUNITY DOES NOT BAR CLAIMS AGAINST DEFENDANTS BECAUSE DEFENDANTS' ACTS AND CONDUCT WERE/ARE NOT JUDICIAL ACTS

Defendant Yates was the supervisor of defendants Goetsch and Wenger and had the responsibility to manage the Pomona Court efficiently and responsively. Defendant Yates failed to do so.

As we all know that the filing of a "Notice of Appeal" deprieves defendants'

jurisdiction of case no. VP 94555.

The jobs in case no. VP 94555 for defendants to perform were processing the said appeal as per provisions of California Rules of Court, Rules 184 thru 187.

Since defendants have repeatedly, willfully, unlawfully, unethically, and unprofessionally ignored the afore-said Rules of California Rules of Court regard -ing the appeal, case no. VP 94555, the Doctrine of Judicial Immunity does not bar claims against defendants, who have repeatedly failed to faithfully discharge their administrative duties in case no. VP 94555, who have repeatedly failed to obey the "Memorandum Judgment", and who were unfaithful to their oaths of offices.

In Karim-Panahi v. Los Angeles Police Department (9th Cir. 1988) 839 F2d 621, 626, the court held that:

"Section 1985 prescribes conspiraci-es to interfere with certain civil-rights."

"Section 1986 imposes liability on every person who knows of an impend-ing violation of section 1985 and neglects or refuses to prevent the violation."

Since defendants have failed to present evidence to support their false assertions, defendants should be held for damages caused by their unlawful, unethical, and unprofessional acts and conduct.

IV. DISTRICT JUDGE PAEZ ABUSED HIS DISCRETION IN DISMISSING THE ADA CLAIMS AGAINST DEFENDANTS

42 U.S.C. Sections 2000a thru 2003a provide:

"An individual, or class of individuals, may not be discriminated a gainst on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangement by (1) denying the oppor-tunity to participate in or benefit from the goods, <u>services</u>, facilities, <u>privileges</u>, advantages, or accommodations of an <u>entity</u> . . . ."

> "An individual with a disability is discriminated against whenever goods, services, facilities, privi-leges, advantages, and accommoda-tions are not afforded to an indivi-dual with a disability in most integregated setting appropriate to the needs of the individual, - discriminatory standards or criteria or methods of administration are utilized."

Since the Pomona Municipal Court is one of the Branch of Government offering government services and is open to public, defendants should not discriminate against any disabled person.

The appellant Tong's assertions are supported by evidence and facts as contained in the Complaint and "Opposition to Defendants' Motion to Dismiss". Those facts and evidence can show defendants have not only repeatedly violated the ADA, those facts and evidence can also show defendants have no human hearts when defendants repeatedly and willfully ignored the appeal, case no. VP 94555

and lied about it.

CONCLUSION

42 U.S.C. Section 1983 provides remedy for people to recover damages from those wrongdoers, who acted under color of state law and who had willfully, unlawfully, wantonly, and oppressively violated appellants' protected constitu-tional rights.

42 U.S.C. Sections 1985 and 1986 provide remedies for people to recover damages from those wrongdoers who conspired to violate appellants' protected constitutional rights.

Defendants are not immune, because defendants' acts were not judicial acts and they have willfully and unlawfully deprived appellants of their protected liberty and property interest.

In light of the foregoing points and authorities, defendants should be held

for damages caused by their unlawful acts.

DATED: July 14, 1997

Stanley Ma, Shong-Ching Tong,
Appellants Pro Se